



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES E. LOCKWOOD)

Appearances:

For Appellant: James E. Lockwood
in pro. per.

For Respondent: Brian W. Toman
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from **the** actions of the Franchise Tax Board on the protests of James E. Lockwood against proposed **assessments of** additional personal income tax and penalties **in the** amountsof \$958.75, \$568.50, \$973.00, and **\$1,100.78** for the years 1974, 1975, 1976, and 1977, respectively.

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On his 1974 California personal income tax return, appellant reported losses from two partnerships. Respondent had no record of returns filed by the partnerships and requested that appellant submit copies of the partnership returns to substantiate the losses claimed. When appellant failed to provide the **requested** returns, a proposed assessment of additional personal income tax was issued and a penalty for failure to provide requested information was imposed. Appellant protested and the proposed assessment and penalty were later affirmed by respondent.

With respect to the 1975 taxable year, respondent at first notified appellant that it had no record of his return for that year. The return was later located, revealing that it had not been filed until March 1977. Appellant had reported no taxable income therein, having claimed deductions for charitable contributions made to the Miletus Church totaling \$124,049. A full refund of tax had been made when the return was processed. Respondent requested substantiation of the charitable contributions and when, after several requests, substantiation **was not** forthcoming, a proposed assessment was issued with penalties for failure to file on notice and demand and for delinquent filing. This assessment was also affirmed after appellant protested.

For the years 197-6 and 1977, respondent's records indicated that appellant had not filed returns. This was apparently because he believed his income was not taxable since he was a member of a religious order under a vow of poverty. Respondent issued proposed assessments for 1976 and 1977 based on information obtained from the **California** Employment Development Department. Various penalties were also imposed for both years. Appellant protested and respondent affirmed its determinations.

The issue presented for 1974 is whether appellant has adequately substantiated his claimed partnership losses. Respondent's determinations of both tax and penalties are presumptively correct and the burden, is on appellant to **prove them** erroneous. (Appeal of Myron E. and Alice 2. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) During the **pendency** of this appeal, appellant did submit a federal income tax Schedule K-1 which shows his distributive share of losses from one of the partnerships. However, this form provides no more information than that which would be shown on his original return. No attempt was made at all to substantiate

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the other claimed partnership loss; 'We find, therefore, that appellant has not adequately substantiated his, claimed losses. **Therefore**, we must sustain respondent's action for 1974. 'Appellant having failed to contest the penalty involved, **it is** also sustained.

For the years 1975, 1976, and 1977, the issue presented is whether appellant has shown respondent's determinations to be in error.

In regard to 1975, we note initially that respondent has conceded the elimination of the penalty **imposed for** failure to file on notice and demand, since appellant did file a return, albeit a delinquent one,. No attempt has been made to substantiate appellant's claimed charitable contributions and their disallowance. must therefore be sustained. (See Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977; Appeal of Dennis G. Davis, Cal. St. Bd. of Equal., Oct. 6, 1976.) **The remaining** penalty is also-sustained, 'since appellant has not contested it.

For the years 1975, 1976, and 1977, appellant worked for Coherent Radiation, **Inc.**, as a **senior** technician and received remuneration from that company for his services. However, he contends that he received the remuneration for services performed "as a Christian priest in the exercise of **duties and responsibilities** according to the Tenents [sic] and Practices of the Miletus Church." By this, we assume he means that he received the income as an agent of the church and is therefore not taxable on the income. Appellant also refers to **Revenue** and Taxation Code section 17137; Internal Revenue Code sections 3401 (a)(9) and 3121(b)(8)(A), and the First Amendment of the United States Constitution in support of his position.

These same arguments have been presented to us in the Appeal of Jack V. and Allene J. Offord, the Appeal of Floyd T. Wright, and the Appeal of James R. Sutherlin, all decided this day. We rejected these arguments in each of those appeals, and we find nothing in this appeal which persuades us to reach an opposite result. Again, appellant has failed to challenge the penalties for 1976 and 1977,so they must be sustained as well.

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ORDER

Pursuant to the views expressed in the-opinion ,
of the board on file in this proceeding, and good cause
appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the actions of the Franchise Tax Board on the protests of James E. Lockwood against proposed assessments of additional personal income tax and penalties in the amounts of \$958.75, \$568.50, \$973.00, and **\$1,100.78** for the years 1974, 1975, 1976, and 1977, respectively, be modified to reflect **respondent's** concession regarding **one of** the penalties imposed for 1975. In **all other** respects, respondent's actions are sustained.

Done at Sacramento, California, this 23rd day of June, 1991, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Reilly, Mr. Bennett and Mr. Nevins present.

Ernest J. Dronenburg, Jr. , Chairman

George R. Reilly, Member

William M. Bennett, Member

Richard Nevins, Member

_____, Member